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ABSTRACT

This guide provides answers to the most-often asked questions about age discrimination. Section 1 discusses the purposes of the Age Discrimination in Employment Act (ADEA), including who is protected, what is unlawful, and what is permitted. Section 2 describes discriminatory actions prohibited by the ADEA. It covers discrimination in hiring, on the job, and in employee benefits and discriminatory terminations. Section 3 addresses exceptions to the ADEA. Section 4 explains how to establish or prove age discrimination. Examples are provided that illustrate how the ADEA has been applied in certain cases. Section 5 discusses the procedures and deadlines an individual must follow to make the federal law work for him or her. Section 6 focuses on the ADEA in federal employment. Addresses of Equal Employment Opportunity Commission field offices and a 4-page checklist for employers to help them assess their company's practices and policies are provided. (YLB)

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Age Discrimination on the Job.
Age Equity in Employment: A Checklist for Employers.

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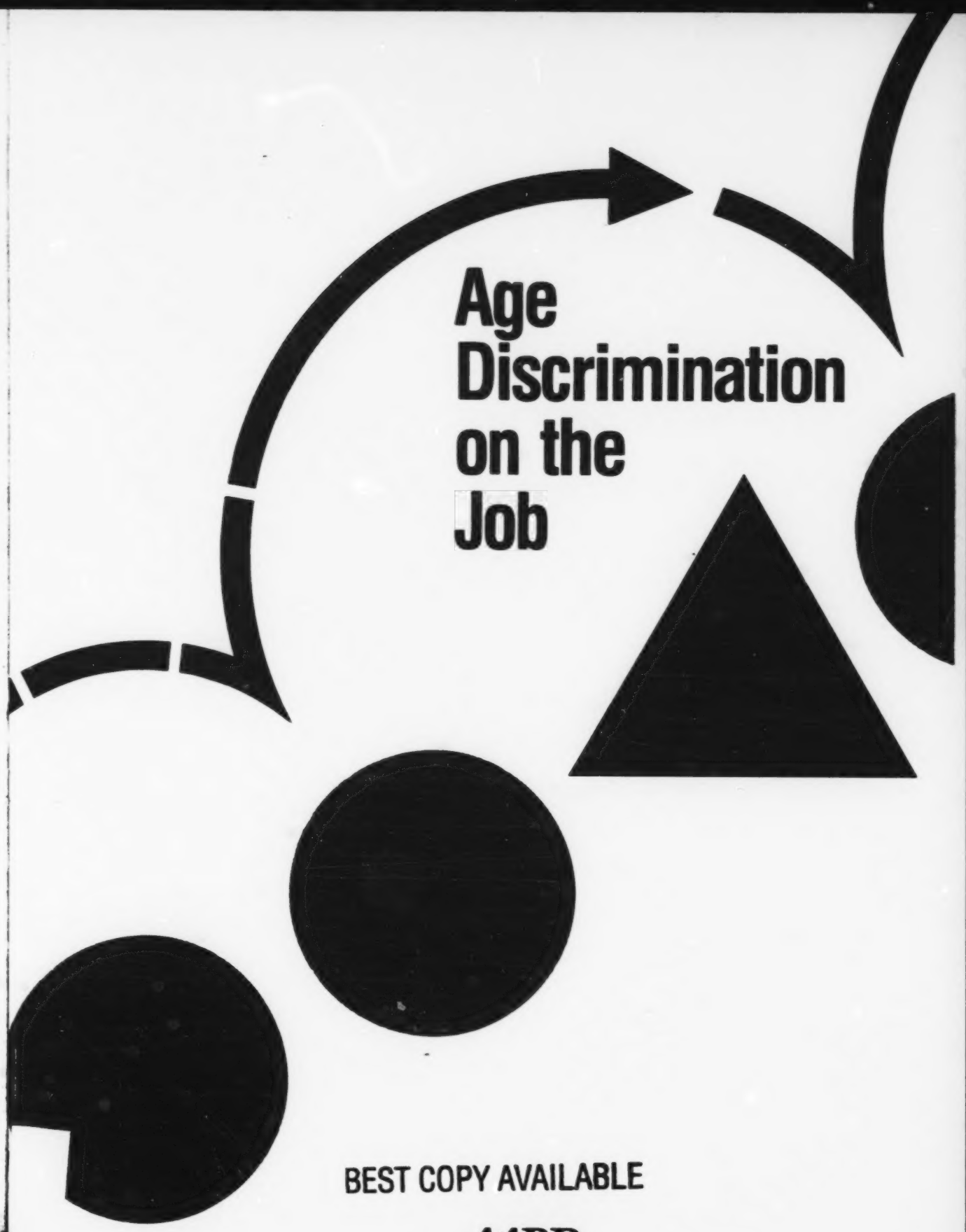

Age Discrimination on the Job

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INTRODUCTION

Why Laws Against Age Discrimination Are Necessary

Age discrimination is a terrible waste of talent, skills, and experience. Yet, many employers still hold ageist stereotypes that lead to discrimination. These stereotypes are reflected in attitudes, policies, and practices affecting every aspect of employment — hiring, training, promotion, layoffs, firing, benefits, and retirement. With the aging of the American work force and businesses downsizing, age discrimination in the workplace is a growing problem.

The Federal Age Discrimination in Employment Act

The federal Age Discrimination in Employment Act (ADEA) protects most workers age 40 and older from discrimination in the workplace. The ADEA is based on an important policy and fact — that ability, not age, should determine an individual's qualifications for getting and keeping a job. Congress enacted the ADEA in 1967 to prohibit age discrimination on the job and to combat the prejudices about older workers in society.

State Age Discrimination Laws

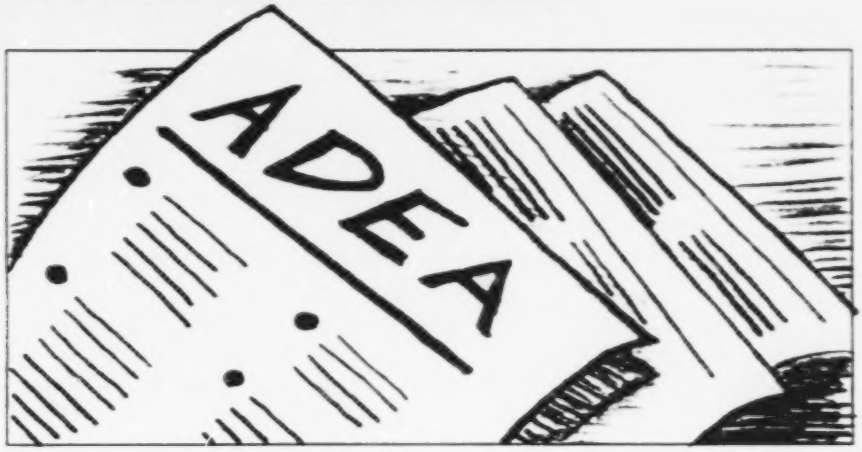
Most states have passed laws against age discrimination that protect older workers. Some state laws provide even greater protection than the federal ADEA. For example, although the ADEA applies only to employers with 20 or more employees, the laws of at least 45 states cover employers with fewer than 20 employees. Some state and local agencies investigate and conciliate age discrimination complaints. In instances where your state system is more favorable than the federal ADEA, you may wish to pursue a claim with the state agency or court. The time limits for filing complaints and the procedures for resolving complaints may differ from state to state and from the federal ADEA. To learn more about pursuing your state law claims, contact your state office on human or civil rights or the state department of labor.

Know Your Rights and Options

Your best defense against age discrimination is a thorough understanding of your rights under age discrimination laws, especially the ADEA. This guide provides useful answers to the most-often asked questions about age discrimination. It explains:

- What is legal and illegal under the ADEA,
- How the ADEA is enforced,
- How you can establish a case of age discrimination, and
- The procedures and deadlines you must follow to make the federal law work for you.

THE PURPOSES OF THE ADEA



The purposes of the Age Discrimination in Employment Act (ADEA) are:

- To promote the employment of older persons based on their ability rather than age,
- To prohibit arbitrary age discrimination in employment, and
- To help employers and employees find ways to resolve problems arising from an aging work force.

Many instances of age discrimination result from employers making ageist assumptions about older persons, for example, assuming that older employees will not work much longer, and then denying older workers jobs, training, or promotions because of such assumptions. The purpose of the ADEA is to require employers to make decisions based on the individual's qualifications, and to eliminate the use of ageist assumptions.

Who Is Protected?

The ADEA protects individuals age 40 and older — job applicants as well as employees. U.S. citizens employed by U.S. companies overseas are also covered by the law. The ADEA does not apply to elected officials or independent contractors.

What Is Unlawful?

The ADEA makes the following practices unlawful:

EMPLOYERS with 20 or more employees, including state and local governments, may not:

- Discriminate against workers age 40 and older in hiring, firing, compensation, benefits, terms, conditions, or any other aspect of employment because of age;
- Indicate age preferences in notices or advertisements for employment; or
- Retaliate against any individual for complaining about age discrimination or for helping the government investigate an age discrimination charge.

EMPLOYMENT AGENCIES serving a covered employer may not:

- Refuse to refer or refrain from referring workers age 40 and older.

The FEDERAL GOVERNMENT must insure that:

- All personnel actions affecting employees (including job applicants) are free of age discrimination.

LABOR ORGANIZATIONS with 25 or more members may not:

- Discriminate against individuals age 40 and older in membership activities;
- Cause or attempt to cause an employer to discriminate against any individual based on age; or
- Retaliate against any individual for complaining about age discrimination or for helping the government investigate an age discrimination charge.

What Is Permitted?

There are several exceptions to the ADEA's broad prohibitions. It is important to be aware of these exceptions because employers can use them as defenses against charges of age discrimination.

Employers may:

- Discharge or otherwise discipline an employee for good cause;
- Base an employment decision on a reasonable factor other than age;
- Observe the terms of a *bona fide* seniority system or a *bona fide* employee benefit plan;
- In rare instances, use age as an employment criterion where it is necessary to the normal operation of a particular business; and
- Retire certain executives or high policymaking employees at age 65.

For more detailed explanations of these exceptions, see pages 10-11.

DISCRIMINATORY ACTIONS PROHIBITED BY THE ADEA

Hiring

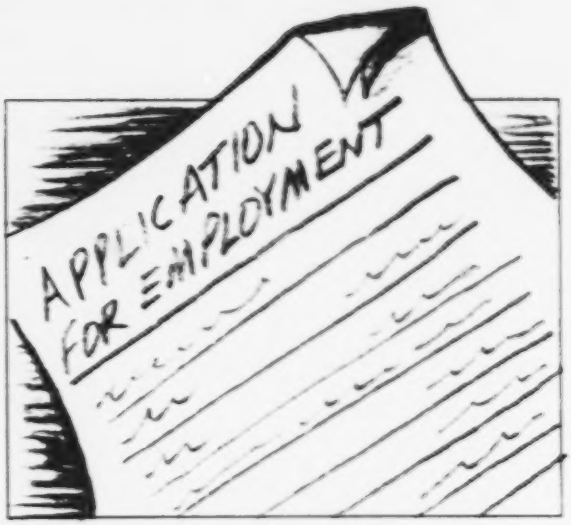
Age discrimination in hiring is often difficult to detect because applicants are rarely informed of the reason for their rejection. But certain actions may provide clues that discrimination has taken place. For example:

- A woman with experience in banking is being interviewed for a loan officer position. The interviewer looks at her background and exclaims, "I'm sure that you won't be interested in this position with your experience — it's an entry-level job."

- An older man who has just been laid off applies for a job at a new plant that he knows is hiring. The receptionist turns him away saying "We aren't hiring now." The next day, he sees an advertisement for the job he sought at the plant.

- At age 55, a woman applies for a job with a computer company. The position requires a year's training on the job. The hiring manager questions her about her plans for retirement, emphasizing that the company wants to maximize its investment in training.

NOTE: Discrimination in hiring on the basis of age is permitted in *rare* circumstances where age is a *bona fide* occupational qualification (BFOQ) for a particular job. This exception is explained on page 10.



Discrimination on the Job

Demotions

It is illegal for an employer to consider age when deciding whom to demote. While a demotion may be a formal change of position, there are also more subtle forms of demotions, such as a reduction in responsibilities. For example:

- An account executive in an advertising firm might find that he is gradually being "eased out" of larger accounts.

- A sales manager may discover that her territory is slowly diminishing in size and profit potential.

- An employer starts to bring in younger employees to take over certain aspects of older employees' jobs, assuming, without justification, that the older employees will retire in the near future.

Harassment

Employers are responsible for ensuring that managers and other employees do not harass older workers. Age harassment can be traumatic and devastating and can take a variety of forms. For example:

- An executive who inherited an older secretary from his predecessor complains that she is "too set in her ways." The executive resorts to harassment, such as giving her burdensome work, making her work overtime, and ridiculing her in front of other employees. The executive's actions make the secretary's job so unbearable that she quits.

- A foreman on an assembly line is 65 years old. The workers on the line question him constantly about why he has not retired and make comments within his hearing such as, "The old man can't see how much he's slowing down," and "Why doesn't he retire and give the rest of us a crack at his job?"

- An older salesperson in a department store is deliberately transferred to the "Juniors' Boutique" where every other sales worker is under age 30 and management knows she will not fit in. The younger employees spend most of their time making fun of the older woman and complaining that she "scares away" their customers.

Promotions and Training

It is illegal to deny employees promotions or training opportunities because of their age. Some signs of discrimination include:

- The denial of promotions to older employees because their supervisors assume they "lack potential."

- Greater training opportunities provided to younger employees because it is assumed that "they will be with the company longer."

Discrimination in Employee Benefits

In 1990, Congress enacted the Older Workers Benefit Protection Act (OWBPA) to amend the ADEA to clearly prohibit employers from denying benefits to older workers. The OWBPA applies to any changes in benefit plans as of October 16, 1990, and to ongoing plans as of April 15, 1991. While there were delayed compliance dates for benefit plans subject to collective bargaining agreements and for state or local government plans, all plans must have complied with the OWBPA as of October 16, 1992.

Individuals protected by the ADEA cannot be denied the opportunity to participate in an employer's benefit plans because of their age. Nor can an employer reduce benefits based on age, unless the reduction meets the following criteria:

- The cost of providing the benefits to older workers must be the same as the cost for younger workers.

- The plan must be insured or based upon insurance methods. For example, reduced benefits for life insurance where risks are assessed to determine the premium is legal. But reduced benefits for educational reimbursements where payments are made on an *ad hoc* basis are illegal.

- The plan must be one in which the increasing age of the insured person results in increasing costs. Thus, a vacation pay plan that gives older workers less benefits than younger workers is illegal, because increasing age does not increase the cost of the benefits.

Listed below are specific interpretations of the ADEA for particular types of benefit plans.

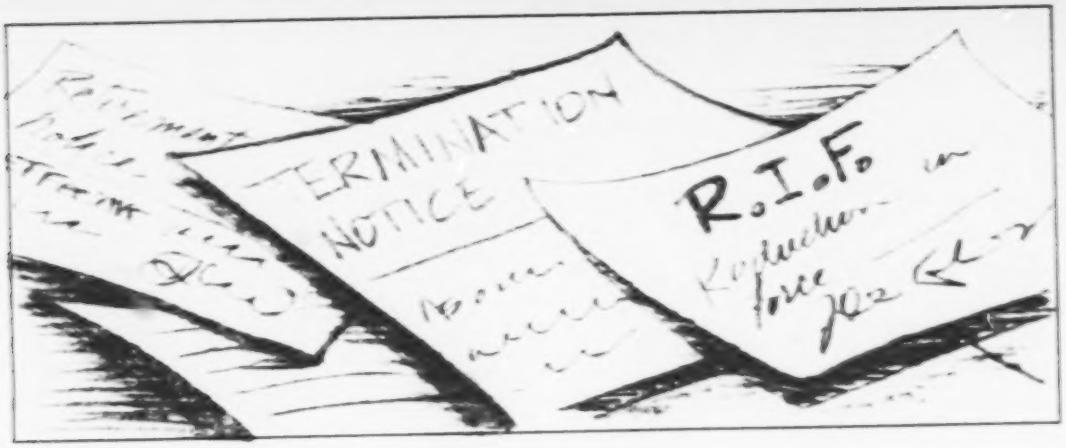
Disability Benefits — Employers are permitted to completely integrate long-term disability payments with pension benefits at age 62. This means that long-term disability benefits received by an individual may be reduced by the amount of pension benefits that the individual voluntarily elected to receive or which an individual, who has attained the later of age 62 or normal retirement age, is eligible to receive.

Early Retirement Incentives — An early retirement incentive benefit cannot be denied to older employees based on their age. For example, a program limited to employees ages 55-60 would unlawfully discriminate against employees age 61 and older. To be lawful, an early retirement incentive program must be voluntary and consistent with the relevant purposes of the ADEA. For additional information on early retirement incentives and compliance with the ADEA, see page 9.

Health Insurance — Health insurance benefits may not be reduced on the basis of age. It is lawful, however, for employers who offer retiree health benefits to offset the value of those benefits against an employee's entitlement to severance benefits as a result of a reduction-in-force, layoff, or plant closing.

Life Insurance — Employers may reduce life insurance benefits for older workers to keep premium costs equal. For example, a premium of $80 a year may buy $30,000 in life insurance coverage for employees ages 55-60. Life insurance coverage for employees ages 60-65 may also cost $80 a year but buy only $20,000 of coverage. The $10,000 difference in benefits would be legal because the *cost* of the benefit is the same for both age groups.

Pension and Retirement Plans — The ADEA explicitly requires equal treatment in pension plans regardless of age. Employers may, however, set a limit on the maximum number of years of service that they will credit to employees. Since 1988, the law has expressly prohibited employers from denying pension credits and contributions to employees who work past normal retirement age.



Discriminatory Terminations

Early Retirement

Many companies offer incentives to older employees to encourage them to retire early. While such incentives may be welcomed by some older employees, others may feel they are being given a message from the company that they are no longer wanted. Any retirement incentive program that forces older employees to leave is unlawful. The key question is whether the employee voluntarily accepted the incentive. Threats that the employee would be terminated or demoted if he or she did not take the incentive could make the incentive unlawful.

Firing

Employers cannot fire individuals based on their age. An older employee may be discharged for reasons that appear reasonable. However, further investigation may reveal that the real reason for the termination was the employee's age. For example:

- In an attempt to eliminate "dead wood," the employer fires an older employee for inadequate performance. Yet, the employer retains several younger employees in the same department with evaluations similar to the older employee.
- An older worker is discharged because a supervisor rated the employee's performance as "poor." The supervisor in question is new — a 28-year-old who has consistently made remarks to other employees about the "grim old lady" working for him. The discharged employee has been rated as "excellent" by all other supervisors for the past 10 years.

Layoffs

Although involuntary layoffs or reductions-in-force are not prohibited by the ADEA, employers may not target older employees when deciding whom to lay off. It is also unlawful for an employer to transfer older employees to a department or division where they would be more likely to be laid off than younger employees who remain in other departments. Finally, employers may not lay off employees based on their eligibility for pension benefits.

Mandatory Retirement

The ADEA generally prohibits mandatory retirement at any age. However, there are certain exceptions. One exception permits the mandatory

retirement of a select group of executives and high policymaking employees age 65 and older. An employer can also set a maximum age limitation if the employer can prove that age is a "*bona fide* occupational qualification" (BFOQ) for a specific job. See page 10 for more details. Two other exceptions, effective January 1, 1987 through December 31, 1993, permitted the mandatory retirement of public safety officers under state or local law, and tenured faculty at age 70. These two exceptions expired on December 31, 1993.

Waivers and Release Agreements

Employers frequently use release agreements to obtain waivers of rights and claims under the ADEA from older employees. Typically, employers require employees to sign a release form or agreement when they are terminated or when they accept an early retirement incentive.

The Older Workers Benefit Protection Act (OWBPA) establishes stringent standards that must be met for a waiver to be valid and binding. Under the OWBPA, the individual's signing of a waiver must be "knowing and voluntary." The waiver must meet all of the following seven requirements:

1. The waiver must be part of an agreement that is written in plain language;

2. The waiver must specifically refer to rights or claims arising under the ADEA;

3. The employee may not waive rights or claims that may arise after the date the waiver is signed;

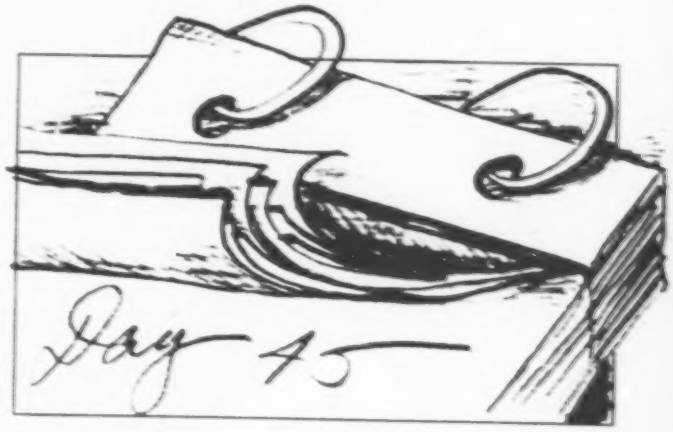
4. The employee may waive rights or claims only in exchange for money or other benefits that exceed those to which the employee would already be entitled;

5. The employee must be advised, in writing, to consult with an attorney prior to signing the agreement;

6. The employee must be given at least 21 days to consider the agreement before signing it; and

7. The employee must be able to revoke the agreement within 7 days of signing the agreement.

If a waiver is requested from a group of employees as part of an exit incentive program or other employment termination program, employees must be given at least 45 days to consider the agreement. In addition, the employer must provide information describing which employees are eligible for or excluded from the program, including their job titles and ages, and any time limits applicable to the program.



EXCEPTIONS TO THE ADEA

There are several exceptions to the ADEA's general prohibitions. If an employer can prove that an exception applies, then the employer's actions will not violate the ADEA.

Bona Fide Occupational Qualification (BFOQ)

The *Bona Fide* Occupational Qualification (BFOQ) exception typically has been used to justify mandatory retirement or maximum hiring ages for certain public safety jobs. To claim successfully that an age limit is based on a BFOQ for that job, the employer must be able to prove:

- That the age limit is necessary for performance of the job. (An example is the job of a clothing model for a teen magazine.) The employer can prove the necessity of the age limit by demonstrating *either* that

1. There is a substantial basis for believing that all or nearly all people who are excluded by the age limit cannot perform the job; *or*

2. It is impossible or highly impractical for the employer to individually test employees to determine if each has the necessary qualifications.

Justifying a BFOQ exception has become more difficult for employers, since it is generally possible for them to test employees on an individual basis, rather than using age as a criterion to exclude older individuals.

Employee Benefit Plans

The ADEA permits employers to observe the terms of *bona fide* employee benefit plans where the payment made or cost incurred for a benefit on behalf of an older worker is no less than that for a younger worker. See pages 6-7. The ADEA also permits the use of voluntary early retirement incentive plans that are consistent with the purposes of the law. See the discussion and examples at pages 6-8.

Mandatory Retirement of Executives and High Policymaking Employees

It is legal under the ADEA for companies to mandatorily retire employees who occupy high-level executive positions or positions that have a significant impact on company policies if the employees:

1. Are at least 65 years of age;

2. Are entitled to an annual retirement benefit of at least $44,000 that is provided solely by the employer seeking to retire them — excluding any Social Security benefits, benefits from previous employers, or benefits from employee contributions; and

3. Have been serving in the executive or high policymaking position for at least two years immediately prior to the retirement date.

The term "executive" does not include employees in occupations such as physician or attorney, unless they have managerial duties rather than purely medical or legal functions. Similarly, a "policymaker" is not an employee who is responsible for the conduct of routine business no matter how well compensated or highly placed he or she is in the organization.

Mandatory Retirement of Public Safety Officers and Tenured Faculty

From January 1, 1987 to December 31, 1993, tenured college professors could be forced to retire at age 70. During that same period, state and local governments could refuse to hire or could retire public safety personnel based on age under certain conditions pursuant to a *bona fide* plan that was not an attempt to evade the purposes of the ADEA. These exceptions expired on December 31, 1993.

Reasonable Factors Other Than Age

Employers may use a reasonable factor other than age in making employment decisions. To be legal, reasonable factors other than age:

1. Must be applied equally. For example, if older workers are disqualified from employment because the position requires an educational degree, then younger workers lacking a degree must also be disqualified.

2. Cannot, in any way, include age. For example, eligibility for early retirement under Social Security includes an age criterion. Therefore, such eligibility cannot be used as a factor in deciding which employees will be laid off.

3. Must be job-related. For example, basing a hiring decision on the ages of an applicant's dependent children would not be a reasonable basis on which to exclude an older worker from employment.

Seniority Systems

Employers may observe the terms of a *bona fide* seniority system as long as the system is not an attempt to evade the purposes of the ADEA. In addition, the system may not require or permit the involuntary retirement of any employee based on age. Nor can such a system be an excuse for failing to hire an older person.

HOW TO PROVE AGE DISCRIMINATION

To demonstrate a violation of the ADEA in court, you must be able to prove the following:

1. You are in the age group (40 or older) protected by the ADEA;
2. You were qualified for or satisfactorily performing in the position;
3. You were adversely affected by an employment action; and
4. A younger worker was selected for the position.

Once you demonstrate these factors, it is up to the employer to explain that the action was not based on age. Even if the employer's explanation is legitimate, you may still show that the explanation is a "pretext" or a cover-up for discrimination. The key question is whether age was a determining factor in the employment action.

CASE STUDIES

The following examples illustrate how the ADEA has been applied in certain cases:

"The Overqualified Applicant"

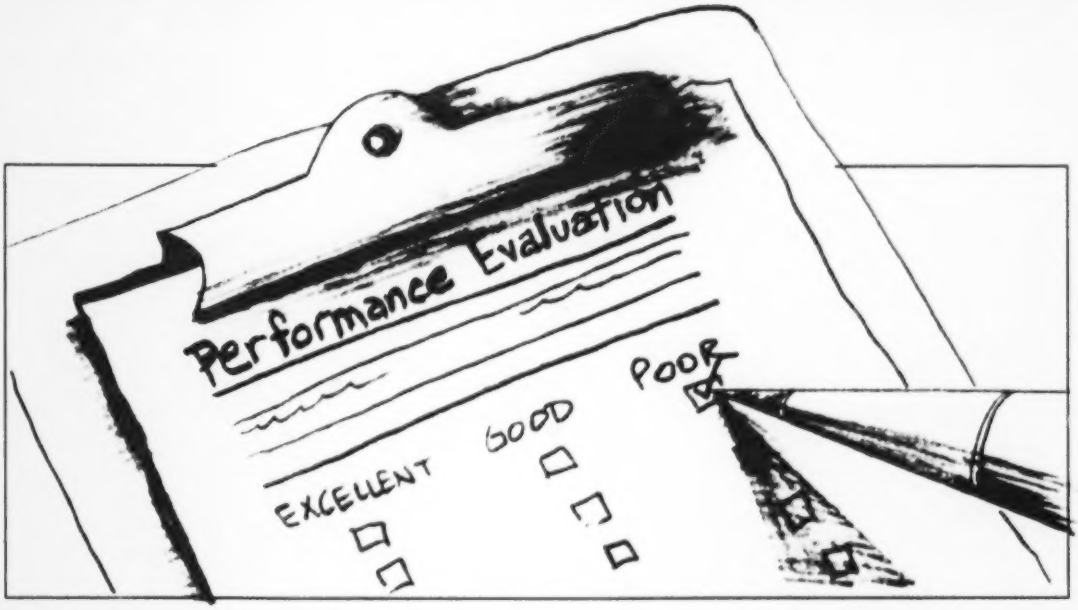
Facts: National Bank announces that it is opening a new branch office and begins advertising for tellers. Denise Thomas, age 50 with 20 years of banking experience, applies for a position at the bank. The employment application asks for her age. Ms. Thomas answers the question truthfully.

The next week, Ms. Thomas receives a polite letter from the bank complimenting her on her qualifications but turning her down on the basis that she is overqualified. The applicant hired instead of Ms. Thomas is a 30-year-old with only 5 years of experience.

Discussion: Ms. Thomas has a claim of failure to hire based on age. She is in the protected age group (40 or over), she is qualified for the position, she applied for the position, and a younger person was hired to fill the position. Although it is not illegal *per se* to ask about a job applicant's age, such inquiries will be closely scrutinized because they may deter older applicants from applying, or be used to screen out older applicants. A company's use of the term "overqualified" may be a sign of age discrimination. It is unlawful for a company not to hire an experienced individual based merely on the assumption that the older employee might become bored and leave the job.

"A Question of Performance"

Facts: Bob Johnson, age 50, was a manager with XYZ Paper Company. For the past 10 years he has received outstanding performance reviews. Two months after receiving a pay increase, he was fired for "poor performance." His replacement, age 35, started the day after he was fired.



Discussion: Older workers, as well as younger workers, can be lawfully fired for poor performance. However, in this case, there does not appear to be any documentation supporting the employer's reason for firing Mr. Johnson. A sudden drop in a performance rating may be viewed with suspicion by juries, particularly when the supervisor failed to give any notice to the employee of his apparent dissatisfaction with the employee's performance. Since Mr. Johnson had just received a performance-based pay increase and had not been warned, reprimanded, or even criticized about his performance before being fired, the employer's reason may be a pretext for age discrimination.

"A Reason Other Than Age"

Facts: Alfred Smith is a coordinator of labor relations for Ace Manufacturing Corporation. For the most part, he has performed his job well. His major problem is poor interpersonal skills, as he is often rude and uncooperative with his co-workers.

At a cocktail party given by the company president, Smith became loud and insulting to some of the guests. One year after the party, he applied for a promotion and seemed to be the only employee clearly eligible for the position. At the time of his application, he was 58 years old and for the past year had been making a determined effort to improve his interpersonal behavior. However, Smith was informed that because of his poor interpersonal skills, the position would be given to employee benefits coordinator Harold Nyes, age 39.

Discussion: Even though he has performance problems, the issue is whether Smith was really rejected because of his age. If age is a determining factor in the decision, then the decision is unlawful even if there are other factors involved. The company's treatment of younger executives with similar problems may provide important evidence in this case. Even without comparative evidence, if there is other evidence suggesting that age was a motivating factor in the promotion decision, Smith's treatment could be discriminatory.

TAKING ACTION AGAINST AGE DISCRIMINATION

What the Older Worker Can Do

Older workers may be able to affect the outcome of an employment decision by informally negotiating with their employers. Before taking any formal action, consider these steps:

1. Assess whether you should use established complaint/grievance systems. For example, if your union agreed to the provision in the retirement plan that is discriminatory, then the union may not want to pursue any complaints about it.

2. Attempt to discuss the problem informally with your supervisor. Think carefully before raising the issue of discrimination directly in these discussions. Some company officials will immediately think "lawsuit" and cut off discussions unless their attorney is present.

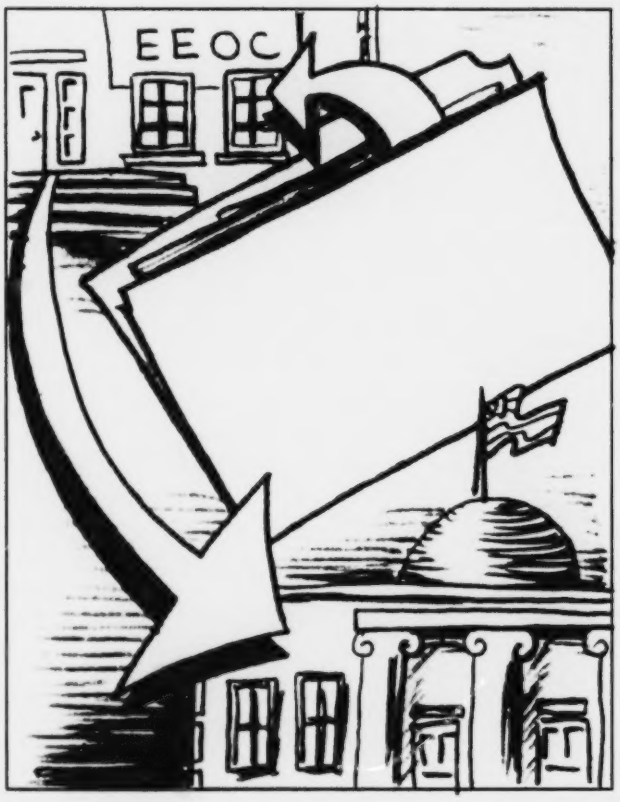
3. Recognize that gathering written information is difficult for an employee and almost impossible for a job applicant. Get as much help in collecting information as possible. Talk to other employees and applicants, but try not to do too much of this on company time, since it may detract from your performance, which the company might then use against you.

4. Know the company's policies and personnel information. Get copies of personnel policies. Find out what an employee's rights are under existing systems. By asking other employees and personnel officials, determine if the company consistently adheres to its policies.

5. Document all meetings and conversations with company officials. Try to get all information about your situation in writing.

6. Look at the company's economic condition. Check business articles and press releases. Investigate possibilities for transfers and other employment within the company if you are faced with a layoff or termination.

7. Look at the company's current recruiting practices. Are they hiring? How are their classified advertisements phrased? Is there an indication in any recruiting materials of a bias in favor of young people, stating for example, "recent college graduate"?



8. Try to find out if there is any pattern of discrimination. Were most of the laid-off employees eligible for a pension? Are training programs limited to younger employees? Are personnel officials or supervisors conducting interviews solely with young people?

9. Try not to spend too much time in informal discussions if they are leading nowhere. There are important time limits for filing charges and lawsuits (see following).

Filing a Charge of Discrimination

If your informal efforts fail, you may wish to consider filing a charge of age discrimination. The Equal Employment Opportunity Commission (EEOC) is responsible for receiving charges of age discrimination under the federal ADEA. You should file an ADEA charge of discrimination with the EEOC for two reasons:

1. It makes the EEOC aware of discriminatory practices and allows it to investigate and attempt to informally resolve the charge, and

2. It preserves your right to file a lawsuit.

In many states, EEOC has contracted with state agencies to process ADEA charges. It is recommended that you file your charge with both the EEOC and the state agency to insure that they both receive it in a timely fashion.

To Make the ADEA Work for You:

- File a charge with the EEOC within *180 days* of the discriminatory action or notice of the discriminatory action, whichever occurred first. If your state has its own age discrimination law, the time limit to file an ADEA charge is extended to 300 days.

NOTE: It is recommended that you promptly file a charge to avoid problems with the time limits. If you do not file the charge within these time limits, you may not be able to file a federal lawsuit.

- Put your charge in writing. A letter will do if you do not have an EEOC charge form. You must include your name and the name of the employer that you feel discriminated against you. In addition, you must briefly describe the actions or circumstances that you consider to be discriminatory.

- You must agree that your name and claim of discrimination can be given to the employer.

If you do not want your name revealed, the government will not accept a charge but will accept a *complaint*. A complaint is a confidential statement that someone has violated the ADEA. The government gives lower priority to investigating complaints, and, if you eventually decide to file a lawsuit, you may be required to file a *charge* first. If you decide to file a complaint, ask the EEOC to explain your right to file a subsequent lawsuit.

EEOC's Role

Upon receiving a charge of age discrimination, the EEOC is responsible for attempting to eliminate the alleged discrimination through investigation, conciliation, and litigation. The EEOC follows the procedures listed below in processing charges of age discrimination.

1. The EEOC interviews the potential charging party to obtain as much information as possible about the alleged discrimination and to explain the investigation procedure.

2. The EEOC notifies the employer that a charge of discrimination has been filed against it.

3. The EEOC will investigate the charge. This is a fact-finding process to determine if the discrimination occurred. The EEOC requests information from the employer about the practices in issue. Witnesses who have direct knowledge of the alleged discriminatory act will be interviewed. The employee claiming discrimination should provide the EEOC with all information relevant to his or her claim.

4. In addition, during the investigative process, the EEOC usually attempts to resolve the problem between the employee and the employer through settlement.

5. The fact-finding and settlement processes are stopped if the EEOC determines that the charge has no merit. The EEOC will notify both the charging party and the employer.

6. If the evidence the EEOC has gathered shows there is reason to believe that discrimination has occurred, the EEOC conciliates or attempts to persuade the employer to voluntarily eliminate and remedy the discrimination.

7. If this conciliation process is not successful, the EEOC will decide whether to take legal action on behalf of the charging party.

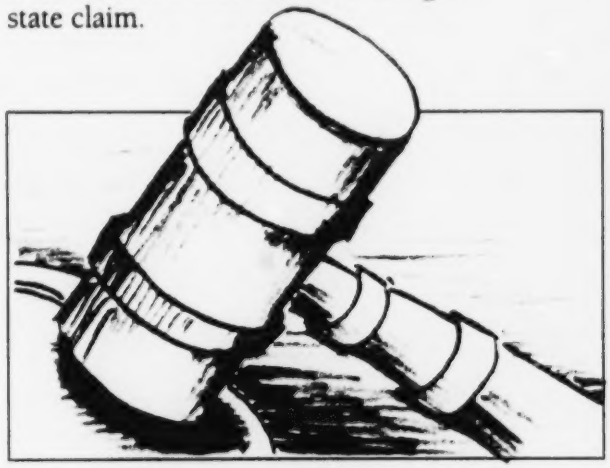
NOTE: EEOC has a significant backlog of charges that may delay the processing of your charge. You must file an ADEA charge and give EEOC at least 60 days to process the charge before you can file a lawsuit in court.

Keep in mind the following points about the EEOC's role in ADEA cases:

- The EEOC is authorized under the ADEA to contract with state agencies to handle some of its age discrimination charges. Some charges may be turned over to these agencies. The state agency must follow EEOC procedures. Because of the EEOC's arrangements with these agencies, when a charge is filed with the EEOC or with the state agency, it is generally viewed as having been filed with both agencies. Under EEOC's regulations, the charging party may request review by the EEOC of the state agency's final findings.

The EEOC may sue under the ADEA on behalf of aggrieved persons. However, this is done only in a very small number of the charges it receives. You should not expect the EEOC to file suit for you. Once the Commission has filed suit, the victims named in the suit may not bring their own private lawsuits.

A Word of Caution About State Age Discrimination Claims: If you wish to preserve your rights under state law, you should also attempt to file a timely charge under your state law with your state agency. You should contact the state agency responsible for enforcing the state age discrimination law to determine the time limits for filing a state claim.



Filing a Lawsuit Under the ADEA

You may file a lawsuit in court at any time from 60 days after you file a charge up to 90 days after you receive notice from the EEOC that it has terminated its proceedings. This is a change in the ADEA's time limit for filing a lawsuit, which took effect on November 21, 1991.

In filing a lawsuit, you should be realistic about the costs for such an action. ADEA cases, like other lawsuits, can cost a great deal of money and take substantial time. Attorneys may not be willing to take ADEA cases on a contingency basis, that is, for payment when and if the case is decided favorably. If other employees have faced a similar discriminatory layoff, then employees may join together to file a class action lawsuit.

Finding a Lawyer

The names of attorneys who specialize in employment law may be obtained from AARP, the National Employment Lawyers' Association, local bar associations, and sometimes the EEOC. These organizations are a good starting point in your search for an attorney. In addition, get recommendations for attorneys from people whose successful age discrimination suits have been reported in local newspapers.

You should always interview an attorney to determine whether she or he has experience in age discrimination cases. If an attorney cannot take your case, he or she may be able to recommend others who are familiar with ADEA litigation. If a number of employees are victims of the allegedly discriminatory action, the employees may wish to join together in a class action suit to retain one attorney.

What to Expect from a Lawsuit

Once you have found an experienced attorney, you should tell your attorney all of the facts in your case, and what you consider to be an adequate resolution of the case. It is important to listen to the advice of the attorney about the merits of the case and the likelihood of success, and the practical considerations about bringing a lawsuit.

You should carefully weigh the pros and cons of bringing a lawsuit. Points in favor of taking an ADEA case to court are the kinds of remedies and relief available to successful individuals. The ADEA provides for jury trials, which may be an advantage to a long-service employee who has been the victim of discrimination. Back pay, lost wages, benefits, and reinstatement may be awarded to successful age discrimination litigants. Instead of reinstatement, a court may award front pay, which is future wages and benefits you would have received had the discrimination not occurred. Liquidated damages (up to twice the amount of back pay) may be awarded in the event of a willful violation. This means that if an employee can prove that the employer acted knowingly or in "reckless disregard" of the ADEA, a court can double the amount of back pay owed to the employee.

If you are successful in your suit, you can recover your attorney's fees. Compensatory damages for psychological "pain and suffering" are not awarded in ADEA cases, although they may be available under state law.

In deciding whether to file a lawsuit, you should realize that litigation takes a great deal of commitment, as well as time and money. It also can take an emotional and personal toll on the individual and his or her family. You should discuss these concerns with your lawyer and your family in deciding the wisest course of action to take.

THE ADEA IN FEDERAL EMPLOYMENT

The ADEA also protects federal employees age 40 and older from age discrimination in employment.

The steps that federal employees must take to protect their rights under the ADEA are quite different from those required of employees in the private sector. Federal employees or applicants for federal employment who believe they have been discriminated against have these options:

- They may file a complaint and go through the equal employment procedures of the agency they believe has discriminated against them. (These procedures are standard throughout the government.) - or -
- They may forego the agency EEO process and file a Notice of Intent to Sue with the Equal Employment Opportunity Commission within 180 days of the discriminatory action. The individual must wait at least 30 days after filing the notice before she or he can file suit.

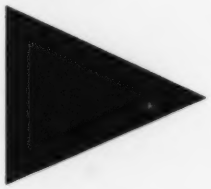
Although litigants against federal agencies are not entitled to jury trials or liquidated damages under the ADEA, they may obtain back pay, lost benefits, reinstatement or front pay, and attorney's fees.

NOTE: For federal employee cases, the statute of limitations for filing suit is unclear at this time. Some courts have required federal employees to file suit within 90 days of the final agency decision on their claims. You should be vigilant and act promptly if you intend to file suit.

THE FUTURE OF ADEA

In the next 20 years, the number of older workers will increase dramatically, while the number of younger workers entering the work force will fall sharply. The need for educated and skilled workers should provide significant opportunities for older persons.

But this need alone will not end age discrimination. Individuals, businesses, and society as a whole must confront and eliminate ageist stereotypes and attitudes. The older worker must be her or his own champion to prove that ability does not decline with age. Businesses and government policies should not continue to encourage older workers to leave the work force prematurely. Age discrimination wastes valuable experience and skills and exacts a significant cost to the individual worker, the employer, and the nation. Ending age discrimination on the job will ensure the best use of our nation's human resources.



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Ste. 900
Albuquerque, NM 87102-2189
(505)766-2061

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Atlanta, GA 30335
(404)331-0604

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Baltimore, MD 21201
(410)962-3932

Birmingham EEOC
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Birmingham, AL 35203-2397
(205)731-0082

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(617)565-3200

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Six Fountain Plaza
Ste. 350
Buffalo, NY 14203
(716)846-4441

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Charlotte, NC 28212-2708
(704)567-7100

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Chicago, IL 60661
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Cincinnati, OH 45202-3122
(513)684-2851

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1660 West Second St.
Ste. 850
Cleveland, OH 44113-1454
(216)522-2001

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303 East 17th Ave.
Ste. 510
Denver, CO 80203-9634
(303)866-1300

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Rm. 1540
Detroit, MI 48226-9704
(313)226-7636

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The Commons, Building C
Ste. 100
4171 North Mesa St.
El Paso, TX 79902
(915)534-6550

Fresno EEOC
1265 West Shaw Ave.
Ste. 103
Fresno, CA 93711
(209)487-5793

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801 Summit Ave.
Greensboro, NC 27405-7813
(919)333-5174

Greenville EEOC
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15 South Main St.
Ste. 530
Greenville, SC 29601
(803)241-4400

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Honolulu, HI 96813
(808) 541-3120

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1919 Smith St.
7th Flr.
Houston, TX 77002
(713)653-3377

Indianapolis EEOC
101 West Ohio St.
Ste. 1900
Indianapolis, IN 46204-4203
(317)226-7212

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Cross Roads Bldg. Complex
207 West Amite St.
Jackson, MS 39201
(601)965-4537

Kansas City EEOC
911 Walnut
10th Flr.
Kansas City, MO 64106
(816)426-5773

Litte Rock EEOC
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6th Floor
Little Rock, AR 72201
(501)324-5060

Los Angeles EEOC
255 East Temple St.
4th Floor
Los Angeles, CA 90012
(213)251-7278

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Rm. 268
Louisville, KY 40202
(502)582-6082

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1407 Union Ave.
Ste. 621
Memphis, TN 38104
(901)722-2617

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Miami, FL 33132-2491
(305)536-4491

Milwaukee EEOC
310 West Wisconsin Ave.
Ste. 800
Milwaukee, WI 53203-2292
(414)297-1111

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330 South Second Ave.
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Minneapolis, MN 55401-2224
(612)335-4040

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Nashville, TN 37228
(615)736-5820

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701 Loyola
Ste. 600
New Orleans, LA 70113-9936
(504)589-2329

New York EEOC
Seven World Trade Center
18th Floor
New York, NY 10048
(212)748-8500

Norfolk EEOC
252 Monticello Ave.
1st Floor
Norfolk, VA 23510
(804)441-3470

Oakland EEOC
Oakland Federal Building
North Tower
1301 Clay St.
Oakland, CA 94612-5217
(510)637-3230

Oklahoma City EEOC
531 Couch Drive
Oklahoma City, OK 73102
(405)231-4911

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(602)640-5000

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(919)856-4064

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(210)229-4810

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Ste. 500
San Francisco, CA 94103
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(912)652-4234

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(206)220-6883

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5th Flr.
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(314)425-6585

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(813)228-2310

Washington, DC EEOC
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Washington, DC 20507
(202)275-7377

AARP is the nation's leading organization for people age 50 and over. It serves their needs and interests through legislative advocacy, research, informative programs, and community services provided by a network of local chapters and experienced volunteers throughout the country. The organization also offers members a wide range of special membership benefits, including Modern Maturity and the monthly Bulletin.

WORK FORCE PROGRAMS DEPARTMENT

AARP's Work Force Programs Department is educating employers, employees, and the general public about retirement and employment issues affecting older workers. Through its program, publications, and volunteer activities, the Department strives to achieve the following goals:

- To assist employers to recruit, manage, train, and retain an aging and increasingly more diverse work force;

- To help empower persons to make informed employment and retirement decisions;

- To advocate the enforcement of nondiscriminatory rules, policies, and practices related to age in the workplace; and

- To develop innovative programs and models that will increase work options available to older persons.

WORKER EQUITY

Worker Equity seeks to increase understanding and enforcement of age discrimination, employee benefits, and disability laws. Worker Equity files amicus curiae (friend-of-the-court) briefs, monitors and initiates litigation, provides guidance to individuals and technical assistance to attorneys, and educates individuals and employers.

For more information about the ADEA or the Work Force Programs Department, write to:

AARP, Work Force Programs Dept.
601 E St., N.W.
Washington, DC 20049

American Association of Retired Persons
601 E Street, N.W.
Washington, DC 20049

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Age Equity in Employment: A Checklist for Employers

■ *Introduction*

America's work force is aging. The U.S. Bureau of Labor Statistics (BLS) estimates that the median age of workers will rise from 34.6 years in 1980 to 38.9 years by the year 2000. Although most 40-year-olds don't consider themselves old, many report having experienced age discrimination on the job or while looking for work. The federal Age Discrimination in Employment Act protects most workers age 40 and older.

Since 1955, the number of older workers has grown rapidly. The number of workers age 45-plus has risen from 25 million to more than 33 million. The BLS projects that workers age 45-plus will number close to 46 million by the year 2000. Employers are beginning to discover that older workers are a vast resource of talent and experience.

Many employers are interested in learning how they can make their jobs more attractive to good workers, including older workers. They want to know what they can do to improve their recruiting efforts, their management style and training policies to attract and keep valuable employees. In response to employers' questions, AARP has developed this checklist to help you assess your company's practices and policies. Not every employer can implement every suggestion. However, many of the suggestions may help you build an age-neutral quality work force that includes the experience of mature persons.

AARP

■ *Policy Development*

Do you...

1 use focus groups of retirees and persons age 40-49, 50-64 and 65-plus to determine:
   - older persons' perceptions of your organization?
   - what they want in a job?
   - how to market jobs to them?

2 include older employees on advisory committees and other policy-making committees?

3 use an advisory committee including older managers and workers, retirees and members of the local senior employment network to help you assess their perceptions of your employment package and recruitment strategies?

4 regularly examine your organization's policies and practices in recruitment, hiring, evaluation, training, promotion and termination to check for age discrimination or negative stereotyping?

5 know what the attitudes of your supervisors and other workers are toward older workers?

6 equate volunteer work experience with paid work experience when considering a candidate for a job or job promotion?

7 periodically conduct age audits to examine your company's age profile and to pinpoint possible barriers to employing and promoting mature workers?

8 have an effective, age-neutral performance appraisal system?

9 offer a flexible benefits program that appeals equally to employees and job candidates of all ages?

■ *Training*

Do you...

1 have an age-neutral tuition assistance program for employees?

2 evaluate the effectiveness of training programs for older workers, and, if necessary, modify programs to meet their skill needs and incorporate their past experience?

3 encourage all employees to participate in informal training and development including job rotation, internship programs, and on-the-job coaching?

4 sensitize managers and all workers to age stereotyping and show them how stereotyping can lead to unfair treatment of older workers?

5 set goals with managers that include equitable training and development, and full utilization of older employees? Reward managers for meeting those goals?

6 educate managers about age discrimination laws?

7 relate new techniques and practices to the older trainees' past experiences and encourage them to use past experience in new situations?

■ *Recruiting*

Do you...

1 periodically review your recruiting process to be sure that it is positive and does not intimidate or frustrate job candidates?

2 state in job advertisements that your organization seeks employees with maturity, good judgment and experience, even for entry-level jobs?

3 try to meet the special needs of older candidates, such as providing training that takes their experience into account?

4 sensitize all managers to the value of hiring and promoting mature workers?

5 offer a benefits package for part-time workers that is fair and equitable so that benefits become an important selling point to job candidates?

6 offer information to older candidates on the effect their employment will have on their Social Security and pension benefits?

7 rehire your own retirees or those of your competitors for part-time and full-time jobs?

8 maintain a job bank including retirees and other qualified workers to fill temporary positions?

9 tap agencies and networks that involve the older population you want to recruit? These include:

___ volunteer groups,

___ social service and employment agencies for special populations regardless of age,

___ service, civic and religious organizations, and

___ education and training centers.

10 use posters, flyers and the media to target older workers?

11 identify ZIP codes where older persons live and use direct mail to tell them about employment opportunities?

12 hold special events to get potential older employees to your place of business?

13 send a "job mobile" to targeted neighborhoods, shopping and recreation centers with an articulate older spokesperson from your business to talk about job openings?

14 participate in local job fairs?

15 train your interviewers to be sensitive to the concerns of older applicants?

16 train your interviewers to understand the importance of transferring older persons' skills and paid or unpaid experience?

17 have interviewers explain any specialized training you offer including what trainees will learn, how long the training will last and how trainees will be evaluated?

■ *Job Redesign*

Do you...

1 identify jobs that can be done by workers with physical limitations and make adjustments in certain jobs to accommodate those limitations?

2 ask senior employment groups or organizations that serve disabled persons to help you assess and redesign jobs for workers with physical limitations?

3 redesign jobs to provide alternatives to traditional full-time work such as:

___ part-time work,

___ temporary work,

___ consulting,

___ job sharing,

___ flex-time programs,

___ flex-place programs, or

___ phased retirement.

4 aggressively seek to retain older workers through such means as mentoring programs and paid sabbaticals?

AARP is the nation's largest organization of Americans age 50 and older. With headquarters in Washington, D.C., this non-profit, non-partisan organization offers a wide range of membership benefits, legislative representation at federal and state levels, and educational and community service programs carried out through a nationwide network of educational and advocacy programs for older workers, who make up one-third of AARP's total membership.

For more information on how to recruit, manage and train older workers, AARP has prepared the following publications:

How to Recruit Older Workers (D13279)
How to Manage Older Workers (D13288), and
How to Train Older Workers (D13287).

Single copies of these publications may be ordered free of charge by writing to:

AARP Fulfillment
601 E Street, N.W.
Washington, D.C. 20049

Be sure to include title and stock number, and allow 6-8 weeks for delivery.

For information on how more than 150 businesses are effectively using the skills of older workers, send for *"Using the Experience of a Lifetime"* (D13353), a brochure that gives information on a variety of programs in the National Older Workers Information System. NOWIS is an employer-to-employer information service providing current summaries on employment programs, policies, and practices developed and implemented by employers to create a more flexible, responsive, and productive work place.

For more information about NOWIS, contact:

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Work Force Programs Department
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AARP

Work Force Programs

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